

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joseph S. and Delores K. Rodriquez,

Complainants,

vs.

Pacific Gas and Electric Company,

Defendant.

Case 03-08-024
(Filed August 25, 2003)

SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER

Summary

Pursuant to Rules 6(b)(3) and 6.3 of the Commission's Rules of Practice and Procedure, this ruling sets forth a preliminary procedural schedule, assigns a presiding hearing officer, and addresses the scope of the proceeding following a prehearing conference (PHC) held before the assigned administrative law judge (ALJ) on November 13, 2003.

Background

The ALJ's October 27, 2003 PHC ruling includes a summary of this dispute. At the PHC, both parties agreed that the summary, quoted below, is accurate.

Complainants Joseph S. and Delores K. Rodriguez wish to extend electric service to real property they own at 130 Corey Road, Aromas, California, which is located in Monterey County. Complainants obtained a proposal for the extension (Attachment G

to the Complaint) from Pacific Gas and Electric Company (PG&E) in March 2002 and thereafter executed it. However, PG&E has refused to proceed until Complainants provide PG&E with a necessary easement over an adjacent parcel, as required by Section 15 of the proposal, entitled “Land Rights.”

Complainants contend that the prior owners of the adjacent parcel (Paul and Helen Tripp) granted an easement to PG&E in 1974 (Attachment E to the Complaint) but that PG&E failed to record the document. Complainants contend that the 1974 easement from the Tripps was the *quid pro quo* for Complainants’ 1973 easement to PG&E, which was recorded and which enabled PG&E to extend service to a portion of the Tripps’ parcel. According to Complainants, the Tripps’ heirs, who are the current owners of the Tripp parcel, dispute the validity of the unrecorded easement. (PHC Ruling, p. 2.)

Appended to the complaint, as Attachment F, is a service extension proposal PG&E prepared for complainants in 1974. However, complainants were not prepared to develop their property at that time and did not execute the service extension proposal. Apparently, PG&E closed the file without further action.

Scope of the Proceeding

Complainants wish PG&E to record the 1974 easement, even though the Tripps’ heirs contest its validity, and then to extend service to complainants under the March 2002 service extension proposal. Alternatively, complainants wish PG&E to extend service to them in a manner that does not require an easement over the adjacent parcel and to absorb the cost difference such construction would entail. As the ALJ has explained, however, the Commission lacks jurisdiction to determine rights in real property and cannot adjudicate the validity of the unrecorded easement. Thus, the Commission cannot order PG&E to record the 1974 easement. Neither can it order PG&E to honor the 2002 service

extension proposal, since that proposal requires, by its terms, that Complainants obtain a valid easement.

Similarly, before the Commission could order the alternative relief complainants seek, the Commission's subject matter jurisdiction must be established. With respect to this case, that means the Commission must conclude that the law applicable at the time and enforceable by the Commission, or PG&E's own established practices and policy enforceable by the Commission under then existing law, required PG&E to act differently than it did (for example, PG&E should have recorded the easement in 1974 or notified plaintiffs in writing that it would not record the easement, etc.). The ALJ has directed the parties to file briefs on this jurisdictional matter and the parties have agreed to the briefing schedule set out below.

To the extent complainants' rely on other legal theories as the basis for the relief they seek, such theories should be pursued in the courts, not at the Commission.

Potential for Settlement

The parties' discussions to date appear to have led to impasse.

I urge both parties to explore whether a mutually acceptable settlement of this matter is possible, after considering the risks and costs of litigation (whether before this Commission or the courts) and the strengths and weaknesses of their own positions.

Schedule

The schedule for this proceeding is as follows:

December 11, 2003	PG&E files and serves brief on jurisdiction
January 12, 2004	Complainants file and serve responsive brief; case submitted for decision on jurisdiction, if no reply brief filed
Date to be set—on or before January 30, 2004	PG&E files and serves reply brief, at its discretion; case concurrently submitted for decision on jurisdiction
Within approx. 60 days of submission	Draft decision on jurisdiction mailed for comment
Approx 30 days later	Draft decision placed on Commission public meeting agenda
To be scheduled if required	Other proceedings, including evidentiary hearing

It is my goal to close this case within the 12-month timeframe for resolution of adjudicatory proceedings, under Pub. Util. Code § 1701.2(d). If an evidentiary hearing is scheduled, parties will be required to submit prepared, written testimony to be used in lieu of direct examination, as provided by Rule 68 of the Commission's Rules of Practice and Procedure. Evidentiary hearing would consist primarily of cross-examination and should require no more than one day.

Category of Proceeding and Need for Hearing

This ruling confirms this case as adjudication. The preliminary determination, in the Instructions to Answer, that hearings are necessary will be reassessed in the decision on jurisdiction.

Assignment of Presiding Officer

ALJ Jean Vieth will be the presiding officer, if evidentiary hearing is held.

Ex Parte Rules

Ex parte communications are prohibited in adjudicatory proceedings under Pub. Util. Code § 1701.2(b) and Rule 7 of the Commission's Rules of Practice and Procedure.

IT IS RULED that:

1. The scope of the proceeding is as set forth herein.
2. The schedule for this proceeding is set forth herein
3. The presiding officer will be Administrative Law Judge Vieth.
4. This ruling confirms that this proceeding is adjudication.
5. Ex parte communications are prohibited under Pub. Util. Code § 1701.2(b) and Rule 7 of the Commission's Rules of Practice and Procedure.

Dated November 24, 2003, at San Francisco, California.

/s/ Geoffrey F. Brown
Geoffrey F. Brown
Assigned Commissioner

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Scoping Memo and Ruling of Assigned Commissioner on all parties of record in this proceeding or their attorneys of record.

Dated November 24, 2003, at San Francisco, California.

/s/ Antonina V.Swansen
Antonina V. Swansen

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074 or TTY# 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.